

CHAPTER NO. 1086

HOUSE BILL NO. 3341

By Representatives Sands, Newton, Pleasant, Haley, Hargett, Bone, Goins, Hargett, Mike Walker, Caldwell, Ferguson, Kent, Ralph Cole, Pinion

Substituted for: Senate Bill No. 3359

By Senators Jordan, Burks

AN ACT to amend Tennessee Code Annotated, Title 24, Chapter 7; Title 37 and Title 40, Chapter 35, relative to the testimony of children in certain types of cases.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 24, Chapter 7, Part 1, is amended by adding the following as a new section:

(a) In a criminal case where the victim of any of the offenses listed in subsection (e) was thirteen (13) years of age or younger at the time the offense was committed, the court may order the child's testimony be taken outside the courtroom by means of two-way closed circuit television, hereafter referred to as CCTV. Prior to entering such an order, the trial judge must make a case-specific finding of necessity that:

(1) The particular child involved would be traumatized;

(2) The source of the trauma is not the courtroom generally, but the presence of the defendant; and

(3) The emotional distress suffered by the child would be more than de minimis, such that the child could not reasonably communicate.

(b) If the testimony of a child is ordered to be taken by two-way CCTV, it shall be taken during the judicial proceeding and the following rules shall apply:

(1) Only the prosecuting attorney, the attorney for the defendant, and the judge may question the child.

(2) The operators of CCTV shall make every effort to be unobtrusive.

(3) Only the following persons shall be permitted in the room with the child while the child testifies by CCTV:

(A) The prosecuting attorney;

(B) The attorney for the defendant;

(C) An interpreter, where necessity dictates;

(D) The operators of CCTV equipment;

(E) Court security personnel, where required;

(F) A parent, counselor or therapist; and

(G) Any person whose presence, in the opinion of the court, contributes to the well being of the child, including a person who has dealt with the child in a therapeutic setting concerning the offense.

(4) The child's testimony shall be memorialized by video taped recording.

(5) During the child's testimony by CCTV, the judge, jury and the defendant shall remain in the courtroom.

(6) The judge and the defendant shall be allowed to communicate with those persons in the room where the child is testifying by any appropriate electronic method.

(7) The defendant shall not be allowed to enter the room where the child is testifying by way of CCTV, except where the defendant is acting as an attorney pro se.

(c) This section shall not be interpreted to preclude, for the purpose of identification of the defendant, the presence of both the victim and the defendant in the courtroom at the same time.

(d) The provisions of this section shall also apply to a witness who was not the victim of any of the offenses set out in subsection (e) but who was thirteen (13) years of age or younger at the time the offense, giving rise to the criminal case, was committed provided there is an individual finding of necessity by the trial judge that conforms to the requirements of this section.

(e) The offenses to which the provisions of this section apply are:

(1) Aggravated sexual battery, as defined in Tennessee Code Annotated, Section 39-13-504;

(2) Rape of a child, as defined in Tennessee Code Annotated, Section 39-13-522;

(3) Incest, as defined in Tennessee Code Annotated, Section 39-15-302;

(4) Aggravated child abuse, as defined in Tennessee Code Annotated, Section 39-15-402;

(5) Kidnapping, as defined in Tennessee Code Annotated, Section 39-13-303;

(6) Aggravated kidnapping, as defined in Tennessee Code Annotated, Section 39-13-304;

(7) Especially aggravated kidnapping, as defined in Tennessee Code Annotated, Section 39-13-305; and

(8) Criminal attempt, as defined in Tennessee Code Annotated, Section 39-12-101, to commit any of the offenses enumerated within this subsection.

SECTION 2. This act shall take effect July 1, 1998 the public welfare requiring it and shall apply to all applicable criminal trials occurring on or after such date.

PASSED: May 1, 1998


JIMMY RAIFEH, SPEAKER
HOUSE OF REPRESENTATIVES


JOHN S. WILDER
SPEAKER OF THE SENATE

APPROVED this 19th day of May 1998


DON SUNDQUIST, GOVERNOR